The Source Of Rights

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A philosophical discussion on the origin of rights amp; that it's source is the will of .Allah

'The Source of 'Rights

point

In the Name of Allah, The Beneficent, the Merciful

:Almighty, the Prudent, says in His holy Book

Nay, he has brought them the truth, and most of them are averse to the truth. And… "should the truth follow their low desires, surely the heavens and the earth and all .(those who are therein would have perished…." (٢٣:٧٠-٧١

.And Allah the Exalted is true

Preface

The subject of our discussion is the origin of ‘rights’. Before entering into discussion of the subject matter it is essential to explain the meaning of right and its usage.

Right, justice and its synonyms are the most sacrosanct words, which enjoy highest sanctity and special elegance of meaning in all the human societies. One can hardly come across a person who would like to introduce himself as the supporter of falsehood and oppression and oppression and opposed to justice and the right. The most tyrant persons and governments proclaim to be true and just in order to deceive the people. They want to cover the ugliness of their aggressive tyrant deeds under the beautiful mantle of justice and truth. The affinity of these two meanings becomes clearer when justice is defined as dispensation of right to the rightful.

The search for truth

p: ۱

and justice is considered as the mother of all social values. The precept of virtue of right and justice is an evident rational dictum. Inclination and ambition for these are considered as a part of man's lofty temperament. So is the precept of vices of oppression and fallacy an evident rational dictum. Dislike for these is also a part of .human nature

Islamic culture also attaches significant importance to these terms. These have repeatedly been referred to in the Holy Qur'an and the sayings of the holy Prophet (S) and the members of his household, the Ahlul Bayt (A.S.) which indicates the .importance of this matter in the system of Islamic values

Let us however, impress upon the fact that the word right has various usages but all of these do not relate to our subject matter. For instance, the word right means permanent being, or the statement according to facts or a promise about something, .which would certainly happen, etc

Therefore, truth in relation to Almighty Allah (S.w.T.) also does not relate to our subject matter. If the search for justice and right is part of human nature it cannot be related to acquaintance and worship of Allah (S.w.T.) and the existence of one cannot be derived from the other. Some have tried to do so to arrive to such conclusions but .they have only confused between its ethical meanings and philosophical conception

The other point is that the limitations for usage of right in legal discussions is much narrower than

its expanded use in ethical and religious discourses, discussions are held on the ‘rights’ of Allah (S.w.T.) over man and even the ‘rights’ of man over Allah (S.w.T.). But as far as the legal concept is concerned it exclusively relates to the relationship between man and man. On the other hand, the word “rights” is used in at least two different meanings as far as its usage by the lawyers is concerned. The one relates to reservations and privileges granted to individuals or groups of persons, which should .be honored by others and should not be violated or encroached upon by any one

The other meaning is the code of laws whose observance is obligatory. These may provide privileges for certain persons or prescribe obligations for others. These can also be laws describing conditions and qualifications, such as explaining the conditions for the correctness of agreements and contracts. The word ‘rights’ in the second .’sense is very much similar to the term ‘social laws

However, these two meanings are not entirely alienated to each other, because all legal laws are connected in one way or the other with the rights of individuals or the society. If it grants a right to somebody it necessitates an obligation for the opposite side. In case it provides obligations for all it would mean provision of reciprocal duties for all. As a result of this every one will have a reciprocal right on the other. As a matter of fact, such general laws

.are dissolved into minor laws each of which guarantee a special right or obligation

To put this in one sentence, it can be said that 'rights' and duties are interrelated and .the enactment of one necessitates the provision of the other

Similarly, the enactment of laws such as those providing details and conditions for entering into agreements and contracts and similar other laws provide both 'rights' .and duties accruing from such agreements and contracts

Presentation of the Issue

As mentioned earlier the search for ones 'rights' is a lofty sacrosanct human value so much so that it is considered to be the mother of all other social values. But the word right by itself does not represent anything or a deed in particular. It cannot precisely specify its meanings. For instance, the meaning of justice can be specified only when a right is stipulated in advance so that its restoration to its owner is considered as the .applicability of justice

In other words the concepts of 'rights' of 'rights' and justice are not substantial concepts, which could be obtained by the realization of its instances and may not need rational considerations and comparisons. A particular move or action cannot always be considered as illustrative of right and justice nor can another type of move .or deed can always be considered as unjust and oppressive

In certain given circumstances, even beating, injuring and killing may be considered as a case of right and justice. For example, if it was a case of reprisal or legal punishment. Hence the legality or

illegality of such actions depends on the fact whether it was done as a reprisal or punishment or committed as an original act without the other party which is beaten, wounded or killed, having committed a crime. So long as such considerations and comparisons are not made, the outward act cannot be defined as right and justified or .illegal and cruel

Hence, the most fundamental issues of the philosophy of 'rights' is as to what is the origin of 'rights'? What is the basis determining the 'rights' and obligations of persons ?in varied conditions

In other words what is the source of segregating the titles of right and the wrong, just and unjust? What considerations and distinctions should be carried out to distinguish ?between these titles

Some may say that instances of right and justice can be recognized through wisdom and natural instinct. Every wise person knows that snatching a piece of bread from a hungry orphan child is cruelty and its restitution a justice. On the whole depriving an owner of his property whatever it may be, or aggression on anyone's life and honor is cruel and unjust, but consumption from one's own property and protection of one's .own life and dignity is rightful and just

But such replies are the outcome of simplicity and lack of in-depth-thinking of scientific and philosophical issues. Anyone who has that least acquaintance with legal matters can quote many instances wherein identification of right and wrong would ,not be as simple as that. In many cases

even the most talented judges in the world get confused while they are required to deliver their judgment. There are abundant instances wherein distinguished legislators of the mankind cannot express a decisive opinion or expressly identify .between the right and the wrong

Therefore, if there are clear, definite and specific instances of right and just for the common man, undoubtedly there are many ambiguous and doubtful cases wherein it is not every specific rules and complex formulae. It is about these rules and formulae .that we have to endeavor and find them out

A Basic Difference

Having dealt with superficial and simplistic views, we come across a deep-rooted difference between the lawyers. The question is whether right and justice have a real essence of their own which needs to be discovered and identified, or such matters are subject to conditions and agreements, for instance, situations which do not have any real essence and rational basis. On the contrary they are dependent on agreement. In cases where there are supportive and overall agreements it is considered that human wisdom and conscience would realize them. In case where such overall agreements do not exist, there is a need for enacted laws so that people's right and duties are .determined through them

Such a tendency existed since long amongst the Sophists who believed that right and justice, as well as all other moral and legal matters were subject to public opinion. Their most well known aim is that man is the standard of everything. From the writings related to

Plato it appears that the major portion of Socrates' discourses with Sophists related .to moral and legal subjects

But this tendency declined with the flourishing of the philosophies of Plato and Aristotle. They could not get any renowned supporter for many centuries. It was only after the renaissance and particularly during the days of Hume, the famous skeptic British philosopher, that this way of thinking came to surface with fresh prestige and dignity. Gradually the number of people contributing to this philosophy increased. Presently the historical and positivist schools of law, which have attained significant .reputation in international legal circles, are more or less fed through this source

In reply to those who contribute to this tendency, it may be said that if 'rights' did not have rational and realistic base, the relationship of contradictory and antithetical laws with the welfare and well being of the people should have been uniform, whether .people liked these laws or adopted laws other than these

Innumerable experiences in addition to ones reason and wisdom indicate that many of the enacted laws have been to the disadvantage of society. Legislators have realized their mistakes after sometime and resorted to set them right. This is the best witness to the fact that irrespective of people's inclination and despite lawmakers' views, real interests and essence do exist, which may occasionally be in line with .enacted laws and at times opposed to it

But this summary reply is not sufficient to remove all doubts, which arise in this regard. It

is necessary that at least the most important of such doubts should be examined and .dealt with

Reason for Deviation

Probably for us, the Muslims, who have been brought up in the environment of Islamic culture, it may be rather astonishing that a group of eminent law experts deny the reality of essence for right and justice and opine that they are subject to people's views and taste. This tendency is in vogue in contemporary legal circles of the world .and has registered considerable numbers of supporters

It may however be noted that, like other deviated ideas in different branches of philosophy and learning, this view did not come to surface extemporaneously nor did it spread or expand merely by chance. There are two reasons for this. Firstly, some invisible hands may have propounded and propagated certain psychological, sociological as well as legal and economic theories with a view to achieve their political and colonial motives. Secondly, certain doubts might have been raised for .which convincing replies could not be found due to weak philosophical foundations

As these doubts and suspicions piled up, they caused a tendency for theories, doctrines and schools, which were of a deviated nature. Let it not be forgotten that most of the deviated thoughts came in vogue only when philosophy and metaphysics became weak and the place of deep thinking rationalism was taken by superficial .sentimentalism

However, what popularized this deviated tendency in lego-moral philosophy is the presence of a number of doubts and suspicions mooted by emporiums and positivism

.etc. and found appropriate social grounds for their acceptance

A detailed examination of such doubts and suspicions and a description of statements and all pervasive disputes in regard to them cannot be discussed in this short paper. Therefore, I would only deal briefly with the most important doubts and provide replies to them. Thereafter we shall explain the acceptable views in regard to the .’origin of ‘rights

Investigation of Doubts

One of the doubts is as follow: There have been and still exist different system of laws. Each of these has been more or less effective in the realization of the objective, which is the maintenance of law and order in the society and relative security of .people’s demand

Every society prefers its own system of laws. If people’s views and understanding undergo a change, the laws ruling the society are also altered. This has been witnessed in different countries of the world. These changes have also taken place even in legal systems that are divine and based on religion. This change takes place by nullification. If laws had a stable rational base such changes and alterations could .not be justified

:In reply it must be said that

Firstly: The legal system should not be considered as a totally independent system. Nor should its objective be considered as the maintenance of order and relative security of peoples demand. On the contrary, the legal system should be recognized as part of a comprehensive and value-oriented system; its object being the creation of a means for the realization of

.ultimate aim through a complete value oriented system

In other words, social relations are only one of the many aspects of human life. The provision and regularization of these relations are a means to provide utmost possible perfection and eternal bliss to the largest possible number of people belonging to the society. Therefore, privilege laws should be enacted in such a manner that they are commensurate with the general objective of the value oriented moral system or at least it is not in contradiction with it. This is a fact, which has been neglected, in man-made legal systems resulting in separation of laws from religion and ethics.

Secondly: The claim that various legal systems are similar as far as the realization of approximate legal objectives is concerned is unrealistic and exaggerated. As mentioned earlier many a times the law makers themselves have realized their mistakes and worked to set them right. It is because the alteration of laws is not only .due to change in views and peoples understanding

Thirdly: Rational and realistic base for laws does not mean that all legal norms have stable and ever-lasting infrastructure. May be the change in certain realities and external conditions may result in alteration in some judicial laws. The nullification of divine laws in certain cases is one such instance. However, the question of the .existence of a rational base for laws should not be mixed up with its permanency

The other doubt is that a legal system comes to realization when the people of a

society or at least some active and effective groups and sections of the society recognize the system. Till such recognition is achieved, it remains an idea in peoples mind or a few lines jotted on a paper. Therefore, the basis of laws is public opinion and their acceptance by people; even if an individual or group of persons in the beginning imposes these on them. However, the wishes of people and the views of individual and groups cannot be neglected and the laws are based on reality of essence .independent of people's views and understanding

In reply it may be said that there is no doubt that the working of a legal system is based on its acceptance in the society. If the people as a whole, or their majority or their active and effective groups are opposed to a legal system and resist it strongly, .the system can never be put into effect

However, the question is whether a legal system can be called just or oppressive without taking into consideration its acceptance or non-acceptance by the people? Can it be said that a people have accepted a just system and another people have submitted to an oppressive one? Can it be said that a system recognized by the people shall be just and that justice and tyranny are nothing but their acceptance or ?rejection by the people

Those who view right and justice as independent of people's opinion and acceptance believe that a given legal system can be just even

if people do not accept it. And naturally another given system, contrary to the first, shall be oppressive irrespective of its acceptance or otherwise by the people. The .above statement cannot contradict and nullify such a view

The other doubt is that legal laws are dictatorial and their essence is command and prohibition even if these are expressed in informative terms. This is evident from description of 'rights' bearing the essence of privileges or from description of enacted laws such as terms and conditions. It is obvious that dictated version could neither be verified nor denied. In such cases one cannot give consideration to facts. We have only to consider the wish of dictator based on negligence and permissiveness. In any case such commands have no other facts behind them except the wishes of the .dictator

In reply is to be said that we do not deny the dictatorial nature of legal terminology nor do we deny the dictatorial nature of informative compositions and also accept the possibility of presentation of dictatorial compositions in the form of informative text. However, the question is that if such wordy and literary debates are set aside, one can say without any doubt that a particular law is in conformity with people's interest .and if enforced their real interests will be served

Similarly, conversely it can also be said that a particular law is against people's interest, our purpose in saying that laws are in conformity with or against people's 'rights' is nothing but what has

been said above. If possibilities of such a comparison were denied it would only mean .to dispute and refute the self-evident

It becomes clear from the above that the existence of description by using dictatorial terminology and words of command and injunction relate only to a particular style of description which is selected to add to the stress laid on such commands. It also has .the aspect of psychology and does not indicate any sign of dictatorship in its nature

The other doubt is in contractual substances and legal subjects which consists of matters like ownership and companionship etc., which have no reality into consideration for legal methods, which include such substances. These are termed as .correct if they are in conformity with provision and called incorrect, if not

In reply it may be said that the above-mentioned matters are, although subject to credibility and contract and that there is no specific factuality in regard to them but it cannot be argued that these have been supposed and stated in an exaggerated .manner

On the contrary, these are like mathematical and algebraically formulae which relate to the effects, fractions and sub-fractions of different factors and are taken into consideration as signs and symbols for particular behaviors and their effects; and that those behaviors and effects so formed on them bear a mark of identicalness and factuality. For instance, the term companionship is a symbol to indicate the state of the total behavior of two spouses in their family life, which is identified

.by certain limitations and restrictions

Therefore, though legal terms are not by themselves indicative of any ocular realities yet they are not entirely alien to such factuality's. We may, therefore, describe the relationship of these matters with facts stating that the states of the actual relationship of mankind are the base and the infrastructure of such matters. In other words it can be said that legal and value matters are like two-faced coins, one side of .which is indicative of their value and the other indicative of their factuality

However, the motive leading to the acceptance of such matters or to consider them as borrowed from substantial and philosophical context is to facilitate their understanding like the motive in all other rational credibility's. For once it can also be like a motive, which leads to the usage of alphabets and brief signs in mathematical .formulae

Therefore, we should not be tempted by the outward credence of legal methods; nor should we neglect the facts hidden behind them. While facts of physics and chemistry are related in the language of mathematics and through algebraically signs, these cannot be considered as devoid of correctness only because of these signs being .contractual

It may be recalled that in case of companionship and other credibility's accruing from contracts and agreements, acceptance of both the sides and their decision to observe particular types of behavior as well as the expression of this acceptance and decision .form parts of a specific social expedience formula

Though all these are

factual and non-contractual meters, the use of a particular word or the writing of a specified sentence or the performance of a particular action during the implementation of the contract may be forged and contractual matter, but the credence of this condition, in its own turn, is subject to real expedience and .substance

It is therefore, concluded that the creditability of legal substances cannot be considered as a reason for the absence of virtues and vices in the substance. Nor can it be said that there is no connection between the legal laws and the virtue and vices .of the substance

The other doubt is that legal methods, while conferring a right of someone emphatically or implicitly, confirm a duty for the opposite side. Therefore, all legal laws should be considered as containing the essence of must or obligation and the synonyms thereof. On the hand we know that such matters, for instance value essence, is different from real essence because real essence speaks of external affairs, and have descriptive aspect as against the matters of value essence which .have instructive and obligatory aspect

In view of these two prefaces, it becomes clear that legal laws cannot be considered as bearing realities and they cannot be derived from descriptive affairs. For instance, if the aim that man is born free and has the potential to select and adopt is taken into consideration, we cannot conclude that man must live free and the right of freedom for every man is intact. This

is because one of the conditions for correct reasoning and deduction is that the result should not contain an essence in excess of the essences that form the axioms. Whereas descriptive passages do not contain terms like must but the instructive .context for instance legal norms do consist such an essence

It is, therefore, concluded that legal passages do not contain ocular realities, neither these are dried from descriptive happenings nor do they contain realities. Hence, legal .laws cannot be considered as authenticated by ocular realities

:In order to clarify the reply to this doubt, two points should be kept in mind

Firstly, it is not the external things, which are meant to be the essence of realities on which legal laws depend. On the other hand it means the qualities which wisdom differentiates in things and persons and the relationship between them. This includes the relationship of passion and impression between the voluntary deeds of a man and the results accruing from them-whether material, worldly and social or spiritual, .moral and otherworldly

Such a relationship is reality of essence; though it may not be related to external things. In other words the logical and metaphysical facts described with special philosophical essence are realities of essence. Therefore, the proposition that it is necessary to observe rules and limitations to maintain order in the society has of essence because the observance of limitations and rules is the cause for the maintenance of order and the existence of cause is necessary for the fulfillment of

the effect-this necessity is iterated as analogical necessity in philosophical terms and .considered as a reality of essence

It is because social order cannot be achieved in the ocular external world without the preservation and observance of laws. This proposition enjoys as much of reality of essence as mathematical and natural propositions. For instance the necessity of water for the growth of trees or the need to raise to the power of two the side of the .square to find out its area

The other point is that logical propositions contain unpronounced parts in addition to pronounced portions. This indicates the relative condition and is known as the essence of proposition in logical terminology. The unpronounced essence may be called as its aspect. It can even be treated as an essential element of the proposition. For instance it may be said that existence of living beings is feasible in celestial bodies. In fact the essence of feasible described the condition of relativity between the living beings and existence in celestial spheres and now it has taken an independent .essence and become the predicate of the proposition

Taking into consideration these two points, it becomes clear that legal propositions are in fact descriptive of the relationship of the causality between the various types of mans voluntary actions and the realization of the objectives of ‘rights’. Their soundness depends on the discovery of the complete formula of causation and the exact identification of its components, conditions and restrictions. But the discovery of such a

complete formula is very difficult in consideration of multiplicity of factors and their variations and different types of restrictions, interests, mischief and shortcomings in .all instances. This also results in creating many different points of views

If, however, one takes into consideration the necessity to contain the legal system within the whole value-oriented system also paying attention to moral objective, the difficulties inherent therein shall become obvious. Finally, one comes to the conclusion that human wisdom is so limited and his experiences so imperfect that these cannot present a perfect legal system, which can work to achieve eternal bliss and complete .perfection. That is why the need for revelation and Divine law becomes obvious

And now the problem regarding the deduction of the word 'must' from the word 'to' be will be solved in view of the second point. The propositions known as descriptive propositions consisting of the relation of causation shall guarantee analogical necessity which form the essence of the proposition and this is the essence of the guaranteed necessity in introducing analogy and appears in the form of must and obligation. Neglect of these logical subtleties has made some others feel that the deduction of value oriented and legal laws from descriptive propositions is not .possible

However, it must be considered that the deduction of the need of effect depends on the realization of all the components of the total cause contrary to the existence of each of the cause factors, which are essential for the realization of

.the effect

If in the preliminaries of analogy only one part of the total cause is included then the need for effect cannot be deduced from them. The sophistication obtained in the deduction of moral and legal propositions from scientific ones is due to the placement of a part of the cause instead of the total cause. The examination of these matters is .not within the domain of this short paper

?What is Expediency

From what has been mentioned above in short, we understand that legal laws can be evaluated on the basis of their being harmonious and in the same direction with actual virtues and vices. In other words it may be said that legal laws should be based on truth and justice and not subjected to capricious desires and tastes of peoples or .groups of people

And should the truth follow their low desires, surely the heavens and the earth and all (those who are therein would have perished... (۲۳:۷۱

This has hereby become clear that legal and value oriented matters are like symbols, so bring out the combination of effect and, impression which take place in the sphere of voluntary actions and social relations of human beings and indicates the direction of movement towards the objective of laws and the final target of value system. It also becomes known that the real duty of the lawmaker is to give thought to the different complex relationship between actions in relation to the legal objectives as .well as to the objectives of morality and religion

He should declare necessary any work of any nature required to be undertaken in order to achieve these objectives and which are within the framework of legal and value oriented subjects. He is also required to prohibit any action of any nature, which .is contradictory to these objectives

All said and done, the other question, which arises, is that what is the objective of real interest and sedition? Do these not finally turn to people's gain or loss and liking and disliking? Is not the basic purpose of laws a matter of value, which is to be fixed in accordance with the desire and the liking of people? It is then that social behavior, under the shadow of their desirability and the means to achieve the desired objectives, becomes legalized. In case the reply to these questions is positive, one has to accept it necessarily that laws and generally the value system and also subjects like right and justice do not have any existence independent of people's wishes and .desires

A detailed reply to these questions is subject to discussions on matters like: essence of values, the relationship of values with reality, the specification of the object of laws and its relationship with the good and bad of the individual and the society and difference between interest and expediency as well as similar other things. Each of these needs a detailed discussion and all these cannot be included in this paper. We are, therefore, compelled to discuss each subject as much as

essential and required. The same has also been the trend followed by us in the .subjects dealt with so far

The first point to be taken into consideration is that the value of voluntary works is different from the value of their aims and objectives. That is to say the worthiness of action, which is considered in relation to morality and laws, means the desirability of the means and tools but the worthiness of objectives means their intrinsic and original .desirability

Also the necessity which is related to the performance of good and beneficial deeds is analogical necessity and meant to achieve the result as far as preferentiality and causality are concerned as against the necessity related to the object itself and .specially the ultimate object which is the achievement of bliss and real perfection

It is also indicative of the truth that every human being is personally desirous of his well being and perfection. This personal desirability is the basic motive required for the performance of any voluntary deed. Without which, no voluntary action can be .performed

The next point is that though the essence of bliss is segregated from mans achievement of the greatest, most stable and highest joys, the achievement of pleasure does not necessarily lead to perfection. However, divine wisdom has created inclination for pleasures in human nature, which are achieved by the fulfillment of his needs. The fulfillment of needs is essential for the continuation of the life of the individual and the mankind and also for

the attainment of the means of perfection-basically speaking the achievement of perfection is considered as one of the spiritual needs of the human being. Hence, mans innate and natural instincts are in fact psychological incentives for a move towards the security of life and perfection. In this way, the achievement of ultimate .(perfection will be combined with perfect pleasure (the real bliss

(They shall have therein what they desire. (۲۵:۱۶

And therein shall be what their souls yearn after and (wherein) the eyes shall delight. ((۴۳:۷۱

According to Holy Qur'an, bliss belongs to those who shall enter divine grace in the .eternal world and awaited with eternal Paradise

(And as to those who are made happy they shall be in the garden, abiding in it. (۱۱:۱۰۸

Therefore, the meanings of true bliss and ultimate perfection are the same. Though .there may not be any agreement or relationship between them

The third point is that there is a reason for difference in determining the meaning of bliss and ultimate perfection and in identifying the path to achieve it. One such reason is the negligence of eternal life and differences in the efflorescence of the capabilities .and rational growth. Here we cannot discuss this in great detail

However, the difference in people's attachment for some specific pleasures or their preference of any joy over another cannot be considered as the reason for the non-existence of perfection or the absence of real inclination for certain desires. On the contrary, perfection is a philosophical essence, which gets segregated for

instance due to extremity of existence and its achievement brings pleasure and .satisfaction

All that may lead man to ultimate perfection and eternal bliss, whatever the stages in between, shall be treated as possessing real good and value. Consequently, just as eternal bliss and perfection are realistic and essence oriented and independent of peoples or groups desires and capriciousness, the good and the corrupt which are also derived from the means to achieve this ultimate objective are real, essential and .independent of desires and likings

Welfare of Individuals and Society

Man has a variety of needs and requirements and the total fulfillment of all of them is not possible in this materialistic world, which is the house of contradictions and hindrances. Many a time there is the need to sacrifice some of these for the sake of others. This is the stage when the question of selection comes to surface. Wisdom demands that the lower and the lesser requirement is sacrificed for the sake of higher .one

However, all the human beings do not follow this principle. It may be due to feeble realization and identification or it may be due to being used to or attached with some of the enjoyments that the people prefer their lower and lesser requirements. It is in .case of such people that it is said that they act against their interests

Therefore, a prudent action is one, which fulfils the more important requirements and achieves higher perfection. In reasoning this is also true in regard to the clash between individual

and group interests. That is to say that social life demands that certain individual interests be sacrificed for the sake of the society. Every individual should give away .some of his individual benefits and desires in order to fulfill the interest of the society

Clash between the interest of an individual and the society takes place in two ways. Firstly the sacrificing of an individual interest for the sake of society takes place in such a manner that it fulfils the requirements of all the individuals of the society including this person who has given up his interest and that this person is granted another interest of the same value or greater than that. In this case his wisdom would .call for such a sacrifice. In other words his own interest demands such a generosity

The other case is that giving up an individual interest may not result in the achievement of equal or greater interest of the individual. That is to say such a generosity may provide him with no benefit or even if any benefit accrues to him it is lesser than the interest he has sacrificed. Can one say in such a situation that it would ?be wise of him to overlook his interest so as to enable others to achieve their own

The fact it that a positive reply cannot be given to this question on the basis of materialistic outlook. It's this outlook, which explains the logic of profiteering. It is on this basis that every individual tries

to exploit the society as much as he can irrespective of the great loss he would incur to others in this process. He would forego his interests only if he feels that if he did not do so he may have to suffer more and may not be able to derive grater benefit from .the society

As a matter of fact those who speak of society's welfare and declare support for others interests and 'rights' from a materialistic point of view are hypocrites and imposters. In fact their only purpose is to achieve their selfish motives and nothing else. This is the reasoning which is prevalent in most of the human societies and he claim to support truth, justice and human 'rights' made by the leaders of the .arrogance and their followers are nothing more than deception

Some of the law experts and jurisprudents are of the view that the basis lies with the society and individual 'rights' are only a part of the society's 'rights'. It is but natural that in case of clash between the 'rights' of the individual and the society, individual .'rights' have no place

However, irrespective of the intrinsic weakness of this view which is based on the denial of the real existence of the individual and despite the fact that various parties calling themselves as supporters of this view have in action treaded the path of others as is seen from the deeds of the socialists in different countries of the world, how can one convince an

individual to the effect that he should rationally give up his personal interests without .acquiring equal or greater benefit from the society

We know that individuals can be made to be indulgent and by means of propagation and inciting their sentiments and feelings. One can also lead them to the battlefield by propagating nationalism and racial sentiments. It is not the question of misguiding the .people; it is the question of finding out a rational solution of the problem

It is through divine wisdom that a positive and clear-cut answer can be found out for this issue. It is because, Firstly divine expediency demands that largest number of human beings achieve their own perfection and worldly comforts be given to human beings as the means to achieve this move for perfection. These should, therefore, be .so exploited that the objective of creation in respect to all the individuals is realized

Secondly, though indulgence and disposition may cause deprivation from material benefits but provide spiritual and moral perfection in return and their achievement is .the real purpose of the creation of man and the world

Thirdly, any deprivation suffered in this world in the path of divine pleasure and for the realization of the objective hidden in the creation of humanity shall be .compensated for in the other world in a better and more perfect form

Therefore, the reason for giving up ones own interests, in case their fulfillment conflicts with the interest of the society, is that divine expediency and the realization of

the objectives of creation demand this. The way to convince people for indulging in such sacrifice is to make them realize that such an indulgence will on the one hand perfect their spirit and inner self bringing about enjoyment of conscience and spiritual pleasure, and on the other hand provide them with eternal and everlasting, bliss and .closeness to divine benediction and unending heavenly blessing

These blessings are not comparable with the materialistic and worldly pleasures either in terms of quantity or quality. In this way the relationship of the divine legal .system with ethical system and the divine concept of universe becomes clear

Relationship of Truth with Expediency

From what has been discussed above, the meaning of expediency and mischief and the need for the conformity of law with individual and social interests becomes clear. It is now the turn to moot the final question: what is the relationship between the truth ?and expediency

In the beginning of the paper we pointed out that the word truth has different meanings. This difference must be carefully attended to so that no mistake or .confusion takes place

One of the meanings of truth in connection with our discussions is that deed should possess an appropriate and befitting aim and objective. That is to say it should cause the achievement of greater success. As against this, untruth means a deed, which is .devoid of such and objective, for instance meaningless and futile deeds

According to this definition a deed, which is expedient, is true and an action devoid of expediency is

untrue. Similarly, a law, which specifies the first type of deed, shall be true and the law, which provides for the other type shall be untrue. In this way, truth and expedience shall be in conformity with and testifying each other. In other words, both the meanings shall be abstract essence and secondary philosophical intelligible which shall be segregated in consideration of the relationship between the action and the .result accruing therefrom

As far as 'rights' as a legal term is concerned it means a legal privilege which is confirmed by individual or society and has a two-side relationship with the rightful and against whom the right is given, and necessarily provides an obligation for the opposite side. This is an essence of credibility, which has close relationship with property. The basic difference is that in regard to property attention is not paid to two aforesaid relationships and only the relationship of owner with the property is taken into consideration

If the essence of right is considered in a wider sense and not limited within the circle of social relations, it would also include moral laws and would also hold true in case of relationship between the Creator and creation. However, the subject of truth should .be related with voluntary action in some way or the other

If only the creative distinction of a being in exploiting the other being is taken into consideration there will be no place for credence to terms like "right", property, etc., unless the privileged person performs

voluntary a deed in this connection or connected with the voluntary work of any other .being

For instance, if the relationship of a tree with sunlight or the rainwater is taken note of and the negative or positive human effect is not given attention to the credence of right for the tree in relation to light and water will be nullified. But if human relationship is also added one can say the tree has the right to make use of sunlight and rain-water; meaning thereby that the man should not hinder the use of light or .water

To be more appropriate, if the two parties to right the rightful and one against whom right is granted be free actors, this meaning would achieve better credence. For instance, it may be said that all human beings have the right to use sunlight and, therefore, nobody should hinder the usage of this divine blessing because in this case both, the rightful and the one against whom right is granted are human beings and .subject of right is sunlight

Therefore, the word right in legal and moral terms is used in instances where the possibility of exercising the will be someone having a free will is under consideration. It is so because morality and 'rights' are voluntary deeds and their allied matters. Anything that is not connected with voluntary action is entirely alien to subject dealing .with morality and law

But the basic issue is that in cases where there is credence of right and duty

?what is the source of these beliefs? What is the basis to ascertain right and duty

In order to reply to this question certain instances are thought of, the most important :of them being as follows

Right and duty are fixed by nature. It is the nature of tree, which gives it the right to (۱) use sunlight, air and water; it is the nature of an animal, which grants it the right to use vegetation. Also it is human nature, which gives him the right to exploit vegetation and animals. Finally, it is the nature of a society, which fixes the right, and duty of .individuals

Irrespective of the fact that nature does not have an occult existence and especially because it cannot be proved that society has a nature, two other problems become :evident

Firstly, as pointed out the credence of right is correct for a thing or person only in case, which necessitates the specification of duty for a person having a free will in that case. For instance, credence to the right of use of water, air and light for a tree is appropriate if it binds a man to observe this right and not to create hindrance in its usage. Any one who gives the right to a thing or person in fact provides a duty for the one who has free will to observe that right. Now the question is as to what authority has the trees nature on a man so as to fix such a

?duty for him? And reciprocally binds man to obey the order or the trees nature

Secondly, when something causes clash between two beings, each of which wants to exploit it, how can their right and duty be fixed? For example, if the life, health or growth of man depends on drinking the water, which an animal wants to drink, in that case will the right of man have preference or that of the animal? Who would specify ?such a right

In reply to such a problem it can be said that universal nature which is the creator of all minor natures of man, animal and other creatures has bestowed greater right to .'the mightier and, therefore, mans right has a preference on animal 'rights

Although it is a fact that the existence of the overall nature is not stable for the world the standard of right, at least in case of clash, in nothing but power and strength. Naturally, if the clash is between beings, the stronger man will have greater 'rights', .this is the basis of the law of jungle and not the basis of human morality and laws

(۲) The other instance is that right and duty is fixed on the basis of their objectives. For instance, a tree moves to attain its particular objective which is the final stage of its growth. It should, therefore, exploit the means to achieve its ultimate goal. So is the ultimate object of mans move for perfection. It is this, which decides its 'rights'. As

far as the clashes between human being are concerned, ‘rights’ and duties should be so specified that the largest number of members of a society achieve those highest .objectives

However, this reply is also not convincing in any way because the dependence of a thing to reach its ultimate aim and perfection on the exploitation of other thing cannot be a convincing argument for man to ignore his own interests and desires. Similarly, he cannot create responsibility for any human being in relation to another individual because each of them is active and endeavor to reach their ultimate goal. How can, ?therefore, this individual submit to a limit for his own exploitations

(۳) The other matter is that the ‘rights’ of every creature are fixed according to its requirements. In a society its members have the right to exploit it according to their requirements. This case is similar to the previous one and raises similar doubts. In addition to this, the essence of the word requirement is doubtful and flexible and no .specific limits can be fixed for that

(۴) The fourth case is that since right and duty go together, the right of a person is fixed in accordance with the obligation and responsibility he accepts for himself. In other words, everyone has the right to benefit from the achievements of a society to the extent he benefits the society. This equation and balancing of ‘rights’ and duties of .individuals in relation to each other is called justice

This statement is acceptable in

regard to 'rights' resulting from contracts and 'rights' accruing from performance of responsibilities which man takes upon himself voluntarily. But as far as primary 'rights' and duties are concerned, such as the right of a new born on his father and mother and their obligation in regard to their children, as well as the right of the disabled and the born-invalids on the society, the above statement does not solve .these issues

The fifth case relates to the fact that the right and duty of each individual is fixed (۵) on the basis of depreciation and deflection of the interests of the individual and the society. This is a more serene matter that those discussed earlier. It clarifies the .relationship between right and expediency better than others

However, it should be noted that firstly human interests are not entirely concerned with material and worldly interests. While accounting for and evaluating these .interests, attention has to be paid to moral and eternal interests as well

Secondly, the evaluation of various interests and the fixation of the extent of their trends is a very difficult and complicated matter and, as a matter of fact, it is beyond the capability of ordinary human beings. It is here that clarifies mans need for .guidance through revelation is clear

And sent down with them the Book and the balance that men may conduct (themselves with equity (۵۷:۲۵

Finally, one-minute point remains uncovered by all that has been said above. It is that on what basis man has the

right of expropriation in things beyond himself, whether inanimate objects, vegetables, animals or other human beings? Again the question is that irrespective of contracts and optional commitments is man considered responsibility in regard to ?them? Wherefrom does he get the right to use his limbs and organs

A clear and logical reply to this question cannot be obtained on grounds of material outlook and without taking into consideration the principles of religious faiths. .However, such a reply can be given on the basis of divine outlook

When human being feels the necessity of giving credence to essences like right and duty in order to direct his voluntary movements and behaviors, he has, in the first instance, to take into consideration the actual relationship amongst the creatures so .as to establish credibility on the basis of realities

However, the most fundamental realistic relationship can be found between the Creator and the created. It is the relationship of actual ownership of the Almighty Allah (S.w.T.) towards His creatures. Hence, the first right of possession of creatures is established for the Creator. On this basis the right of possession for every existent .being has finally to be authenticated by divine design

Therefore, if the Almighty Allah (S.w.T.) did not permit man to use his limbs and organs he could not have this right. The right to possession of other beings, all of which are the total and absolute property of the Creator could not, therefore, be imagined. Also, the first duty of a man originates from

the real over-lordship of the Almighty Allah (S.w.T.) and no duty can take precedence .over it. All other 'rights' and duties spring from this right and duty

No doubt, man due to negligence towards the Almighty Allah (S.w.T.) and His real ownership, turns attention towards his genetic domination on his own organs, limbs and energies and considers that he has the right of possession on them. But no sooner does he realize his own bondage towards the Almighty Allah (S.w.T.), then he knows that his ownership of his own organs and limbs is below the ownership of Allah .((.(S.w.T.) and the same for other servants (of Allah (S.w.T

No doubt man sees his possession of blessings available in his environment as free and unrestricted. It is only in connection with clash with others that he realized the need to give credence to 'rights' and duties. It is on the basis of standards such as precedence in possession or severity of requirements etc. that man gives credence to .laws, preferences and privileges and accepts duties and responsibilities

In fact the motive for these credits is the need for a comfortable and peaceful social life, which cannot be achieved except by observing these rules. But once this matter gets related to Origin and Resurrection, the question arises that if man's deeds become the source of credence of right on the basis of an external element, why cannot his own creation and that of the entire world become the source of right for ?the Creator

If

the comforts of social life induce him to accept limitations for his own possessions and recognize obligations for himself, why should he not pay attention to the natural inclination towards attainment of spiritual perfection and eternal bliss and accept .responsibility towards their achievement

However, the right and duty, which relate to matters beyond social relations, go farther than their legal essence. But in consideration of the fact that legal system forms a part of the total value system, they cannot be considered wholly alien to each other. So is the case of value system, which cannot be considered, unrelated with ?religious order

In conclusion, it is said that according to divine thought man's primary right of possession of his organs and limbs and other God given blessings and comforts originate from the Will of Allah (S.w.T.) towards the perfection of creatures and the .ever-increasing realization of their accomplishment

If and when there is a clash in the perfection of different creatures, the lesser perfect beings are sacrificed for the sake of more perfect beings. For instance, vegetation and animals are subjected to the exploitation by man who has achieved greater .perfection, both de jure and de facto

Similarly, if the realization of accomplishment for all the individuals of a society is subjected to the sacrifice of some, this has to be done. No doubt the Almighty Allah (S.w.T.) will not leave such sacrifices unrewarded and their sacrifices will be .compensated for in the best possible manner in the eternal world

Thus all 'rights' and

duties, whether moral or legal revert to the prudent will of Allah (S.w.T.). In case where wisdom can minutely discover the requirements of prudence, there will be no need for divine revelation. But in most of the cases need for divine revelation and Prophethood is felt because of complicated formula and lack of comprehension by ordinary wisdom of all the changes and pressures of their effects and the exact .balancing of preferences and evaluation

It is for this reason that Allah (S.w.T.), the Prudent, in consideration of His extreme Benevolence and as demanded by His Wisdom has sent prophets and divine laws so that men may recognize the path of their perfection and possess accurate equilibrium .for evaluation

And the heaven, He raised it high, and He made the balance, that you may not be .(inordinate in respect of the measure (۵۵:۷-۸

.In this manner, the harmony between genesis and legislation also becomes clear

About center

In the name of Allah

هَلْيَسْتَوِيالَّذِينَيَعْلَمُونَوَالَّذِينَلَايَعْلَمُونَ

?Are those who know equal to those who do not know

al-Zumar: ٩

:Introduction

Ghaemiyeh Computer Research Institute of Isfahan, from ٢٠٠٧, under the authority of Ayatollah Haj SayyedHasanFaqihImami (God blesses his soul), by sincere and daily efforts of university and seminary elites and sophisticated groups began its activities .in religious, cultural and scientific fields

:Manifesto

Ghaemiyeh Computer Research Institute of Isfahan in order to facilitate and accelerate the accessibility of researchers to the books and tools of research, in the field of Islamic science, and regarding the multiplicity and dispersion of active centers in this field

and numerous and inaccessible sources by a mere scientific intention and far from any kind of social, political, tribal and personal prejudices and currents, based on performing a project in the shape of (management of produced and published works from all Shia centers) tries to provide a rich and free collection of books and research papers for the experts, and helpful contents and discussions for the educated generation and all classes of people interested in reading, with various formats in the .cyberspace

:Our Goals are

(propagating the culture and teachings of Thaqalayn (Quran and Ahlulbayt p.b.u.t-

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paving the way for the publications and authors to digitize their works-

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relationship with similar centers-

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mentioning the sources-

.It's obvious that all the responsibilities are due to the author

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:Appreciation

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